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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

APRIL F. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SAN  
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Real Party in Interest.

D043613

(San Diego County  
Super. Ct. No. J514497C)

Proceedings in mandate after reference to a Welfare and Institutions Code section 366.26 hearing. Hideo Chino, Juvenile Court Referee. Petitions denied.

April F. (the mother) and Joseph J. (the father) (together, the parents) seek review of juvenile court orders terminating their reunification services regarding their child, S. J.,

and setting the matter for a hearing under Welfare and Institutions Code section 366.26. (All statutory references are to the Welfare and Institutions Code unless otherwise indicated.) The mother contends the court erred in not addressing the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.) (the ICWA) and, without determining whether the ICWA may apply, finding that proper notice had been provided. The father joins her argument. We deny the petitions.

#### FACTUAL AND PROCEDURAL BACKGROUND

On June 11, 2003, the San Diego County Health and Human Services Agency (the Agency) petitioned under section 300, subdivision (b) on behalf of one-month-old S., alleging she was at risk because the mother had an untreated drug problem, the parents had unresolved domestic violence problems and the court had declared S.'s brothers dependent children and had subsequently terminated reunification services for the parents in the brothers' cases. He said the parents were hiding S. and mother previously had hidden S.'s brothers from the Agency until she was arrested and the brothers taken into protective custody. The court ordered S. detained when located.

For the jurisdictional/dispositional hearing the social worker reported that on June 24, 2003, S.'s maternal aunt (the aunt) called to tell him S. was at her home. S. was detained in licensed foster care. The social worker again reported the ICWA did not apply.

On a paternity questionnaire dated July 2, 2003, the father checked a box signifying he might have American Indian heritage. The parents submitted to the

allegations of the petition. The court found them true and gave the social worker discretion to place S. with relatives.

On July 22, 2003, the parents did not appear for the scheduled disposition hearing. The court issued bench warrants and continued the matter.

At a settlement conference on August 28, 2003, the court declared S. a dependent child and ordered reunification services, including that the parents participate in the Substance Abuse Recovery Management System (SARMS). It placed S. with relatives. The parents did not appear at SARMS review hearings in September and November 2003 and were charged with contempt.

For the six-month-review hearing, the social worker again stated the ICWA did not apply. He reported the parents had not enrolled in SARMS and had not been visiting S. He recommended terminating reunification services and setting a section 366.26 hearing.

At the six-month review hearing the social worker testified he was the social worker for S.'s brothers' cases as well as for S.'s case. The court accepted offers of proof that if the parents were to testify they would say if they were granted further opportunity, they would do everything they could to reunify with S. The court terminated reunification services and set a section 366.26 hearing.

The parents separately petition for review of the court's orders. (§ 366.26, subd. (l); Cal. Rules of Court, rule 39.1B.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

## DISCUSSION

The parents contend the court erred in not addressing the ICWA issue and in finding proper notice was provided without determining whether the ICWA may apply.

Congress enacted the ICWA in 1978 to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families." (25 U.S.C. § 1902.) Section 1911 of the ICWA provides a tribe may intervene in state court dependency proceedings. (25 U.S.C. § 1911(c).) Notice to the tribe provides it the opportunity to exercise its right to intervene. (*In re Junious M.* (1983) 144 Cal.App.3d 786, 790-791.) The ICWA provides "where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings, and their right of intervention." (25 U.S.C. § 1912(a).) "[T]he juvenile court needs only a suggestion of Indian ancestry to trigger the notice requirement." (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 848.) A reviewing court may imply a finding if substantial evidence supports it. (*In re Kristin W.* (1990) 222 Cal.App.3d 234, 253.)

Here, although the court did not expressly find the ICWA did not apply, the record shows that finding may be implied. The only suggestion of American Indian heritage was the father's checking the box on the paternity questionnaire signifying he might have Indian heritage. He left blank the space where he was asked to identify the name of the Indian tribe to which he might be affiliated. We have taken judicial notice of the nonpublished opinion in S.'s brothers' cases, where it is explained that the parents and the

paternal grandfather denied there was any American Indian heritage in the family and the social worker investigated the father's suggestion of Indian heritage and determined it had no basis. (*April F. v. Superior Court* (Aug. 26, 2003, D042288) [nonpub. opn.].) S. is a full sibling to her brothers and the court found the father is her presumed father. The social worker for S.'s case testified he had also been the social worker for S.'s brothers' cases and the court referred to those cases during the hearing. Substantial evidence supports an implied finding that the ICWA did not apply in this case.

#### DISPOSITION

The petitions are denied.

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McINTYRE, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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O'ROURKE, J.